No. 95-190

Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1995

DAVID R. KNAPP AND GRK CORPORATION,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES

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17 pp

QUESTIONS PRESENTED

1. Whether, in a prosecution for the filing of false reports of cash payments in violation of 26 U.S.C. 7206, it was plain error for the district court not to submit to the jury the question of the materiality of the false statements in the reports.

2. Whether the district court committed plain error when it instructed the jury that an act is done "willfully" if the "defendant acted voluntarily and intentionally to violate a known legal duty or acted with a bad purpose or evil motive."

3. Whether the jury instruction that the crime of conspiracy "is the agreement to do something unlawful" communicated to the jury that petitioner Knapp had to know that the object of the conspiracy was unlawful.

4. Whether the district court's general instruction on the definition of "knowingly" negated its specific *mens rea* instructions for the money-laundering offenses, which stated that petitioner Knapp had to "know that the transaction involved property which represented the proceeds of some form of unlawful activity."

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OPINION BELOW

The opinion of the court of appeals (Pet. App. A1-A19) is unpublished, but the judgment is noted at 52 F.3d 335 (Table).

JURISDICTION

The judgment of the court of appeals was entered on April 5, 1995. A petition for rehearing was denied on May 19, 1995. Pet. App. B1-B2. The petition for a writ of certiorari was filed on August 1, 1995. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

After a jury trial in the United States District Court for the Eastern District of California, petitioner Knapp was convicted on one count of conspiracy to engage in money laundering, in violation of 18 U.S.C. 371 (Count 1); two counts of money laundering, in violation of 18 U.S.C. 1956(a)(1)(B)(i) (Counts 4 and 5); and one count of filing a false currency transaction report, in violation of 26 U.S.C. 6050I(f)(1)(B) and 26 U.S.C. 7206(1) and (2) (Count 6). Petitioner GRK Corporation was convicted on the Count 6 charge of filing a false currency transaction report. Knapp was sentenced to 46 months' imprisonment, three years' supervised release, and a fine of $10,000. GRK Corporation was fined $51,400. The court of appeals affirmed.

1. Petitioner Knapp was vice president and general manager of Knapp Ford/Mercury, a car dealership controlled by petitioner GRK Corporation. Knapp also sold cars for the dealership. Such dealerships are required to file an IRS Form 8300 for any transaction in which a vehicle is purchased with currency exceeding $10,000. The form requires an accurate identification of the source of the cash. See Gov't C.A. Br. 3-4.

In 1987, Knapp sold a Lincoln Town Car to James Paxia. In 1988, Knapp sold Paxia a Suzuki. Paxia, who paid cash for both vehicles, told Knapp on several occasions that he sold cocaine. Paxia also told Knapp that he did not want to purchase the vehicles in his own name. Knapp agreed to sell the Lincoln Town Car to Paxia in Paxia's mother's name, and to sell the Suzuki to him in the name of his deceased father. In Knapp's presence, Paxia signed the name of his

mother to the sales contract for the Lincoln; it is unclear who forged the name of Paxia's deceased father on the paperwork for the Suzuki. The purchase of the Lincoln involved a cash transaction of more than $10,000, but Knapp Ford/Mercury never filed a Form 8300. The purchase price of the Suzuki was less than $10,000, and so no Form 8300 was required. See Gov't C.A. Br. 4-5.

In May 1989, on Paxia's recommendation, Ignacio Moreno approached petitioner Knapp to buy a car for his ex-wife. Moreno, who was also a drug dealer, told Knapp that he wanted to pay cash, and that he did not want his name associated with the transaction. Knapp told Moreno that he was aware how Moreno and Paxia made their money, and that Moreno's name did not have to appear on the paperwork, even though he was paying for the car. Moreno agreed to a purchase price of $19,900, including a trade-in of a pickup truck, a $6,700 cash down payment, and a further payment of $7,000 in cash. The cash was paid to Knapp by Ignacio Moreno, but the Form 8300 was filled out in the name of Moreno's ex-wife, Linda Moreno. See Gov't C.A. Br. 5-6.

In July 1989, Ignacio Moreno returned to the dealership to purchase a car for his girlfriend, Lisa Bargas. He bought a 1989 Lincoln Mark VII from Knapp for $27,838.50. Moreno again told Knapp that he did not want his name associated with the transaction, and he said that he wanted to put the car in the name of his uncle, Jose Ayala. The sales documents were prepared in Ayala's name, and Moreno signed Ayala's name in Knapp's presence. Moreno gave Knapp a down payment of $13,500 in cash and, a week later, made a second cash payment of $8,000. A few weeks later, Knapp went to Moreno's ranch to pick up

the final cash payment of approximately $7,000. No IRS Form 8300 was completed for the transaction, although one was required. The Lincoln Mark VII transaction was the basis for Knapp's conviction on Count 4. See Gov't C.A. Br. 6-7.

In late July 1989, Moreno returned to the dealership to buy a pickup truck. Moreno told Knapp that he wanted to buy it under the name of his parents' business, H & M Orchards. The purchase price was $20,043.46. Knapp signed the name of his brother-in-law, Daniel Hoyt, to the paperwork, and made a cash down payment of $12,000. Two weeks later, Moreno made a second cash payment to Knapp at the dealership. Knapp told Moreno that the social security number of the purchaser was needed in connection with the sale. Moreno called his sister from Knapp's office to get Hoyt's social security number, which he then gave to Knapp. About a week later, Moreno returned to the dealership to make the final cash payment. Although Moreno made all the cash payments, the IRS Form 8300 was completed in Hoyt's name. This transaction formed the basis of Knapp's conviction on Counts 5 and 6 and GRK Corporation's conviction on Count 6. See Gov't C.A. Br. 6-7.

2. The court of appeals affirmed petitioners' convictions in an unpublished opinion. Pet. App. A1-A19. With respect to the conspiracy conviction, the court of appeals rejected petitioner Knapp's various challenges to the jury instructions, which have not been reasserted in this Court. *Id.* at A3-A8.[1] With respect

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[1] In this Court, Knapp has raised a new argument, namely, that the conspiracy instruction failed to inform the jury that Knapp could be convicted only if he knew that the object of the

to the convictions for money laundering, the court of appeals rejected petitioner Knapp's argument that the district court's general instruction defining "knowingly" negated its specific jury instruction on "knowledge" for the money-laundering offenses. Pet. App. A10-A14. The court observed that, on the money-laundering charges, the district court specifically instructed the jury that "[petitioner] must *know* that the transaction involved property which represented the proceeds of some form of unlawful activity" (*id.* at A12) (emphasis in court of appeals' opinion) and also that petitioner must know "that the property involved in the transaction represented proceeds from some form, though not necessarily which form[,] of activity that constitutes a felony under federal or state law" (*id.* at A13). Those instructions, held the court, "directly address[ed] the possibility that the jury could have * * * convicted without finding [that petitioner] knew the money represented illegal drug proceeds." *Id.* at A13-A14.

With respect to the convictions for filing a false currency transaction report, the court of appeals rejected petitioners' argument that the district court erred in deciding the "materiality" component of the offense as a matter of law, rather than submitting the question to the jury. Pet. App. A15-A16. The court of appeals decided petitioners' case before this Court's decision in *United States* v. *Gaudin*, 115 S. Ct. 2310 (1995), which held that, in prosecutions brought under 18 U.S.C. 1001, the question of "materiality" must be decided by the jury, but after the Ninth Circuit's en banc decision to the same effect in *Gaudin*.

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conspiracy was unlawful. See pp. 11-12, *infra*. That argument was neither raised in nor addressed by the court of appeals.

The court of appeals rejected petitioners' contention that its decision in *Gaudin* also applied to prosecutions brought under 26 U.S.C. 7206, and ruled that the question under Section 7206 was governed by prior Ninth Circuit precedent, *United States* v. *Flake*, 746 F.2d 535 (1984), cert. denied, 469 U.S. 1225 (1985), which held that "materiality is a question of law under 26 U.S.C. § 7206(1)." Pet. App. A15-A16.

The court also rejected petitioners' contention that the district court's "willfulness" charge for the false-report offense was improper because it instructed the jury that an act is done "willfully * * * if a defendant acted voluntarily and intentionally to violate a known legal duty *or acted with a bad purpose or evil motive*." Pet. App. A14-A15 (emphasis in court of appeals' opinion). The court of appeals ruled that the challenged instruction was consistent with its prior decision in *United States* v. *Powell*, 955 F.2d 1206 (9th Cir. 1992), which stated that "the government may prove willful conduct by establishing either: (1) that the defendant acted with a bad purpose or evil motive, *or* (2) that the defendant voluntar[ily], intentionally violated a known legal duty." Pet. App. A14 (quoting *Powell*, 955 F.2d at 1211) (emphasis in *Powell*).

DISCUSSION

1. Petitioners argue (Pet. 9-15, 19-21) that their convictions on Count 6 must be reversed in light of *United States* v. *Gaudin*, 115 S. Ct. 2310 (1995), because the district court removed from the jury's consideration the question whether the false state-

ments on the IRS Form 8300 were "material."[2] Petitioner did not object at trial to the district court's treatment of the materiality issue (or any of the other issues raised in the petition). Even if the district court did err in removing the issue of materiality from the jury's consideration, that error did not rise to the level of plain error, and it therefore does not warrant reversal of the conviction. See *Gaudin*, 115 S. Ct. at 2321-2322 (Rehnquist, C.J., concurring).

Under *United States* v. *Olano*, 113 S. Ct. 1770, 1775-1779 (1993), an appellate court may correct a claim of error not raised below only when the error is "clear" and "obvious" under current law and the error affects substantial rights. If those conditions are satisfied, the court should exercise discretion to correct the error only if failure to reverse would result in a miscarriage of justice that "seriously affect[s] the fairness, integrity, or public reputation of judicial proceedings." *Id.* at 1776. Petitioners fail to establish plain error.

First, any error in the decision not to submit the issue of materiality to the jury in this case was not "clear" or "obvious" under then-current law.[3]

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[2] The district court instructed the jury, "You need not be concerned whether any false statement was 'material,' as that word is used in the charges in counts three and six." Jury Instr. No. 24.

[3] On the contrary, at the time of trial it was neither clear nor obvious that, if materiality was an element of an offense, it should be decided by the jury. Rather, precedent held that the materiality determination in a prosecution under Section 7206 was a question for the court. See, *e.g.*, *United States* v. *Flake*, *supra*. Nevertheless, petitioners err (Pet. 19) in suggesting that their failure to object to the trial court's resolution of the

Second, affirmance of the conviction would not amount to a "miscarriage of justice." Given that petitioner Knapp knowingly and willfully declared Hoyt, rather than Moreno, to be the source of the funds for the purchase of the pickup truck, it is clear that the IRS Form 8300 prepared by Knapp was not "true and correct as to every material matter," in violation of 26 U.S.C. 7206(1), and was "fraudulent or * * * false as to any material matter," in violation of 26 U.S.C. 7206(2). The purpose of currency transaction reporting requirements is to provide the government with information that has "a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings." *California Bankers Ass'n* v. *Shultz*, 416 U.S. 21, 26 (1974). IRS Form 8300 requires (in certain cases) the recipient of large amounts of currency to report the source of the cash in order to assist the government in tracing money that may be the proceeds of illegal transactions; the Form thus provides the government with essential information in investigating drug trafficking and a crucial tool in preventing money laundering. In this case, it is clear that the identity of the true source of the funds for the pickup truck—a drug dealer—was a "material matter" within the meaning of 26 U.S.C. 7206, and petitioners did not argue otherwise to the trial court or the jury.

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materiality issue should be excused because objection would have been "futile." Long before the trial in this case, a panel of the Ninth Circuit had ruled that materiality in a prosecution under 18 U.S.C. 1001 was required to be submitted to the jury. See *United States* v. *Valdez*, 594 F.2d 725, 729 (9th Cir. 1979). Petitioners thus had the "tools to construct" a claim that materiality under Section 7206 is a jury issue. *Engle* v. *Isaac*, 456 U.S. 107, 133 (1982).

Petitioners argue (Pet. 19-21) that *Gaudin* error always requires reversal of a conviction. This Court has never held, however, that the failure to submit an element of an offense to the jury always requires reversal, even if the defendant made no objection, and even if the evidence on that element is overwhelming. In *Sullivan* v. *Louisiana*, 113 S. Ct. 2078, 2081-2082 (1993), the Court held that an erroneous jury charge on the meaning of "reasonable doubt" cannot be harmless error because, in such a case, there is no "jury verdict" at all within the meaning of the Sixth Amendment. In this case, by contrast, the jury was properly instructed on reasonable doubt, see Jury Instr. No. 3; the alleged error pertains, instead, to the district court's failure to submit one element to the jury. Cf. *Carella* v. *California*, 491 U.S. 263, 266 (1989) (per curiam) (instruction requiring conclusive presumption by jury can be harmless error). Moreover, although *Sullivan* addressed the question of harmless error, it did not address the issue of *plain* error, in the absence of any objection at trial to the instruction that was given. *Sullivan* therefore does not suggest that the failure to submit an element of the offense to the jury is always plain error.

Although we believe that the district court's treatment of materiality in this case was not plain error, we note that, in a recent case involving a prosecution under 18 U.S.C. 1014, in which the court of appeals affirmed after the district court removed the question of materiality from the jury's consideration without objection from the defendant, this Court granted the petition for a writ of certiorari, vacated the judgment of the court of appeals, and remanded the case for further consideration in light of *Gaudin*. *Waldron* v. *United States*, No. 95-167 (Oct. 16, 1995).

Because this case is in a similar posture, the same disposition would be appropriate here.

2. Petitioners argue (Pet. 14-15) that the district court's "willfulness" instruction on the false-report offense was erroneous because it charged the jury that it could find that petitioners acted "willfully" if they acted with "a bad purpose or evil motive." Petitioners argue that the instruction was inconsistent with *Cheek* v. *United States*, 498 U.S. 192 (1991). That contention is incorrect.

In *Cheek*, the Court held that, in criminal tax cases, "[w]illfulness * * * requires the Government to prove that the law imposed a duty on the defendant, that the defendant knew of this duty, and that he voluntarily and intentionally violated that duty." 498 U.S. at 201. In that case, the jury was instructed that "[a]n honest but unreasonable belief is not a defense and does not negate willfulness." *Id.* at 197. The Court held that instruction erroneous because, "[i]n the end, the issue is whether, based on all the evidence, the Government has proved that the defendant was aware of the duty at issue, which cannot be true if the jury credits a good-faith misunderstanding and belief submission." *Id.* at 202.

In this case, by contrast, the jury was instructed that "[t]he 'good faith' of each defendant is a complete defense to the charge[] * * * because good faith on the part of a defendant is, simply, inconsistent with the intent to wilfully file a false Form 8300." Jury Instr. No. 25. *Cheek* did not suggest that there was any impropriety in instructing a jury that a "bad purpose or evil motive" constitutes willfulness, and the courts have generally treated proof of a "bad purpose or evil motive" as equivalent to proof of a specific intent to violate the law. See *United States* v.

Pomponio, 429 U.S. 10, 11 (1976) (per curiam) (reversing court of appeals decision based on lower court's mistaken belief that the reference to an "evil motive," in *United States* v. *Bishop*, 412 U.S. 346 (1973), "meant something more than the specific intent to violate the law"). As the Ninth Circuit has observed in its prior decisions, "'[e]vil motive' is merely a 'convenient shorthand expression to distinguish liability based on conscious wrongdoing from liability based on mere carelessness or mistake.' * * * Therefore, if on the one hand, the [government] had proved beyond a reasonable doubt that [petitioners] had acted with a bad motive or evil purpose, then the [government] would have established that [petitioners] had acted willfully." *United States* v. *Powell*, 955 F.2d at 1210-1211. In this case, the jury was instructed on the essential point, that mere negligence or carelessness could not constitute willfulness, and any ambiguity in the instruction was not plainly erroneous.

3. Petitioner Knapp argues (Pet. 15-17) that the jury instruction on the conspiracy charge failed to inform the jury that he could be convicted only if he knew that the object of the conspiracy was unlawful. Petitioner did not object at trial to that aspect of the jury instructions and did not raise the argument in his appellate briefs; nor did the court of appeals address the argument. This Court ordinarily will not consider arguments neither raised nor decided below. See *Adickes* v. *S.H. Kress & Co.*, 398 U.S. 144, 147 n.2 (1970).

In any event, the contention is without merit. One of the elements of the conspiracy offense described in the jury instruction was that "there was an agreement between two or more persons to commit at least

one *crime* as charged in the indictment." Jury Instr. No. 16 (emphasis added). The instruction also charged the jury that "[t]he crime is the agreement to do something *unlawful*" and that "[y]ou must find that there was a plan to commit at least one of the *crimes* alleged in the indictment as an object of the conspiracy." *Ibid.* (emphasis added). Those instructions adequately informed the jury that petitioner could be convicted of conspiracy only if he agreed to do something that he knew was unlawful.

4. Finally, petitioner Knapp argues (Pet. 17-19) that the district court's general instruction on the definition of "knowingly"—that "[an] act is done knowingly if the defendant is aware of the act and does not act or fail to act through ignorance, mistake or accident" (Pet. App. A13)—conflicted with its specific *mens rea* instructions on the money laundering offenses—namely, that petitioner had to "know that the transaction involved property which represented the proceeds of some form of unlawful activity." *Id.* at A12 (emphasis omitted). As the court of appeals noted, however, the district court also specifically charged the jury that petitioner had to "kn[o]w that the property involved in the transaction represented proceeds from some form, though not necessarily which form[,] of activity that constitutes a felony under federal or state law." *Id.* at A13. In combination, therefore, the instructions ensured that the jury was not confused about the element of *mens rea* for money laundering, and there was no danger that the jury could have convicted Knapp without finding that he knew that the "money represented illegal drug proceeds." *Id.* at A13-A14.

CONCLUSION

As to the first question presented, the petition for a writ of certiorari should be granted, the judgment of the court of appeals should be vacated, and the case should be remanded for further consideration in light of *United States* v. *Gaudin*, 115 S. Ct. 2310 (1995). As to the other questions presented, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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